

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 301 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

K F PARMAR

Versus

DIRECTOR COTTAGE INDUSTRIES & INDUSTRIAL CO-OPERATION

Appearance:

MR AK CLERK for Petitioner

MR MUKESH PATEL for Respondent No.1, 2 & 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/01/97

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The challenge is made by the petitioner to the order of the respondent No.1 dated 2nd January 1989, under which the petitioner was directed to pay the amount of Rs.5,000/- in ten equal installments.

3. The petitioner is a Senior Clerk in Cooperative

Department. The amount of Rs.5,000/- was sought to be recovered from the petitioner on the ground that this amount was missing from the amount of Rs.21,987.433, which has been brought by Shri Ajmalbhai Gopabhai Rabari, Peon of the Department, from the bank for payment of salary to the staff. One of the contentions raised by learned counsel for the petitioner is that the order has been made in total violation of the provisions of Rule 6 of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971 (hereinafter referred to as 'Rules 1971'). The relevant portion of Rule 6 of the Rules 1971 reads as under:

"6. Nature of penalties: Without prejudice to the provision of any law for the time being in force, the following penalties may, for good and sufficient reasons, be imposed upon any member of the State, Subordinate or Inferior Service namely:

Minor Penalties

(1) Censure.

(2) Withholding of increments or promotion.

(3) Recovery from his pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders.

Rule 11 of the Rules 1971 provides procedure for imposing minor penalties. Rule 11 of the Rules 1971 reads as under:

"11. Procedure for imposing minor penalties:

(1) Subject to the provisions of sub-rule (3) of rule 10, no order imposing on a Government servant any of the penalties specified in items (1) to (3) of rule 6 shall be passed except after--

(a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour or of any culpable act or omission, on which it is proposed to be taken, and giving him a reasonable opportunity of making such representations as he may wish to make against the proposal.

(b) holding an inquiry in the manner laid down in sub-rule (3) to (22) of rule 9, in very case in which the Disciplinary Authority is of the opinion that such inquiry is necessary.

(c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration.

(d) recording a finding on each imputation of misconduct or misbehaviour or of any culpable act or omission, and

(e) consulting the Commission where such consultation is necessary.

(2) The record of the proceedings in such cases shall include--

(i) a copy of the intimation to the government servant in the proposal to take action against him,

(ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him,

(iii) his representations if any,

(iv) the evidence produced during the inquiry,

(v) the advice of the Commission, if any,

(vi) the finding on each imputation of misconduct or misbehaviour, or of any culpable act or omission, and

(vii) the order on the case together with the reasons therefor.

4. The documents which have been produced on record reveal that the notice was given to the petitioner to show cause why the said amount should not be recovered, but the petitioner was not given any notice whatsoever informing him in writing of proposal to take action against him and of imputation of misconduct on which it is proposed to be taken. The matter does not end here, but the authority has to record finding on each

imputation of misconduct, which admittedly has not been done in the present case. The learned counsel for the respondents is unable to show that the procedure as laid down under Rule 11 of the Rules 1971 has been followed in the present case before the respondents have decided to recover Rs.5,000/- from the petitioner. The respondents could have recovered the amount from the petitioner where after holding the inquiry as provided under Rule 11 of Rules 1971, it has recorded finding that pecuniary loss caused to the Government was as a result of negligence or breach of orders on the part of the petitioner. The learned counsel for respondents has not produced any order on the record of this case as well as proceedings taken under Rules 1971 to show that the authority has recorded a finding against the petitioner that pecuniary loss of Rs.5,000/- was caused to the Government because of his negligence or non compliance of the order. The order impugned in this Special Civil Application is passed in violation of provisions of Rules 6 and 11 of Rules 1971 and it cannot be allowed to stand.

5. In the result, this Special Civil Application succeeds and the order dated 2.1.89, annexure 'F', is quashed and set aside. However, it shall be open to the respondents to proceed against the petitioner in accordance with Rule 6 and 11 of the Rules 1971, and thereafter pass appropriate order. In case ultimately the respondents decide that the pecuniary loss of Rs.5,000/has been caused to the Government because of negligence or non compliance of the Government order by the petitioner, the petitioner shall be liable to pay the aforesaid amount together with interest at the rate of 12% p.a. from the date of filing of this Special Civil Application, i.e. 16th January 1989. Rule made absolute in aforesaid terms. No order as to costs.

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